

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: Keurig Green Mountain Single-Serve
Coffee Antitrust Litigation

This document concerns all related actions.

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: Case No. 1:14-md-02542 (VSB) (SLC)
: MDL No. 2542

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: Hon. Vernon S. Broderick
: Hon. Sarah L. Cave

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: **DECLARATION OF ALDO A. BADINI**

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I, Aldo A. Badini, declare as follows:

1. I am an attorney admitted to practice before the courts of the State of New York and a partner at Winston & Strawn LLP. I am one of the attorneys representing Plaintiffs TreeHouse Foods, Inc., Bay Valley Foods, LLC, and Sturm Foods, Inc. (collectively, “TreeHouse” or “Plaintiffs”) in the above-captioned matter. I make this declaration on personal knowledge and in support of Plaintiffs’ Motion to Exclude the Proposed Testimony of Hon. Arthur Gajarsa (Ret.). If called as a witness, I could and would competently testify to the matters stated herein.

2. Consistent with the parties’ agreed-upon protocol in the above-captioned matter, Defendant Keurig Green Mountain, Inc. (“Keurig”) disclosed Hon. Arthur Gajarsa as an expert witness on July 1, 2020. A true and correct copy of Keurig’s July 1, 2020 Letter from Carl Lawrence Malm to Plaintiffs re: Expert Identification Supplement is attached hereto as Exhibit C.

3. Thereafter, on July 2, 2020, Keurig indicated that Gajarsa was expected to offer expert testimony regarding the “alleged objective baselessness of Keurig’s prior claims against TreeHouse and JBR.” A true and correct copy of Keurig’s July 2, 2020 Letter from Carl Lawrence Malm to Plaintiffs re: Expert Identification Supplement is attached hereto as Exhibit D.

4. On July 8, 2020, at Plaintiffs' request, the parties participated in a meet and confer regarding Keurig's disclosure of Gajarsa and the purported basis for his testimony. During the meet and confer, Plaintiffs asked for clarification as to the expected nature of Gajarsa's testimony, given that objective baselessness is a question of law, and asked for any authority Keurig had that suggested otherwise. Keurig failed to identify any legal authority for the proffered testimony of Gajarsa.

5. Attached hereto as Exhibit A is a true and correct copy of an email dated July 31, 2020 from Mulan Cui to Keurig's counsel memorializing the parties' discussion during the July 8, 2020 meet and confer and disclosing, under protest, Randall R. Rader as a potential expert witness to address any opinions proffered by Gajarsa.

6. To date, Keurig has not provided any authority for the legal opinions offered by Gajarsa.

7. Attached as Exhibit B is a true and correct copy of the Expert Report of Arthur Gajarsa, as submitted by Keurig.

8. Attached as Exhibits E and F are true and correct copies of an email chain, dated December 14, 2020 through December 22, 2020, between Carl Lawrence Malm and Lauren Duxstad regarding the Gajarsa Report.

9. Attached as Exhibit G is a true and correct copy of the Declaration of Mark C. Wood in Support of Plaintiff Keurig, Inc.'s Motion for Preliminary Injunction, dated October 15, 2010, as filed in *Keurig Inc. v. Sturm Foods Inc.*, 1:10-cv-000841-SLR-MPT, ECF No. 13 (D. Del. Oct. 18, 2010).

10. Attached as Exhibits H and L are true and correct copies of excerpts from the Rule 30(b)(6) Deposition of Mark Wood on December 3, 2019, and February 14, 2020, respectively.

11. Attached as Exhibit I is a true and correct copy of a document produced by Keurig bearing Bates numbers KGM00840594 through KGM00840596.

12. Attached as Exhibit J is a true and correct copy of a document produced by Keurig bearing Bates number KGM00840683.

13. Attached as Exhibit K is a true and correct copy of Keurig Green Mountain, Inc.'s Responses and Objections to JBR Inc.'s Amended Requests for Admission Nos. 7-9, dated November 23, 2020.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: New York City, New York
January 15, 2021

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